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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

RIN 0648-BC10

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; withdrawal.

SUMMARY: We (NMFS) have determined that a final rule to withdraw the alternative tow time restriction and require all skimmer trawls, pusher-head trawls, and wing nets (butterfly trawls) rigged for fishing to use turtle excluder devices (TEDs) in their nets is not warranted at this time. Thus, we are discontinuing our Environmental Review process under the National Environmental Policy Act (NEPA) and do not intend to prepare a Final Environmental Impact Statement for this Action. We therefore withdraw our proposed rule to require TEDs in these vessels published May 10, 2012, in the Federal Register.

DATES: The proposed rule published on May 10, 2012 (77 FR 27411), is withdrawn as of [insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Michael Barnette, 727-551-5794.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 2012, we published a proposed rule (77 FR 27411) that would require all skimmer trawls, pusher-head trawls, and wing nets (butterfly trawls) to use TEDs in their nets. Subsequently, a notice of availability on a Draft Environmental Impact Statement (DEIS) to Reduce Incidental Bycatch and Mortality of Sea Turtles in the Southeastern U.S. Shrimp Fisheries was published on May 18, 2012 (77 FR 29636). The

comment periods for the proposed rule and DEIS ended on July 9 and July 2, 2012, respectively.

We prepared the DEIS and proposed rule in response to elevated sea turtle strandings in the Northern Gulf of Mexico, particularly throughout the Mississippi Sound area, in 2010 and 2011. Necropsy results indicated a significant number of stranded turtles from both the 2010 and 2011 events likely perished due to forced submergence, which is commonly associated with fishery interactions. The most likely cause of the strandings was thought to be the shrimp fisheries, and, in particular, the inshore skimmer trawl fisheries; for the purposes of this notice, skimmer trawls, pusher-head trawls, and wing nets (butterfly trawls) will be collectively referred to as skimmer trawls or as the skimmer trawl fisheries. Skimmer trawlers are currently authorized to use alternative tow times in lieu of TEDs, pursuant to 50 CFR 223.206(d)(2)(ii)(A)(3). The alternative tow time restrictions limit tow times to a maximum of 55 minutes from April 1 through October 31, and 75 minutes from November 1 through March 31. The DEIS and proposed rule noted compliance issues with the alternative tow time restrictions by skimmer trawl vessels, which could result in mortality of sea turtles. Based on new information discussed below, our previous conclusions regarding the impact of non-compliance with tow time restrictions in the skimmer trawl fleet were likely overly conservative and the DEIS mortality estimates likely do not reflect actual fishery impacts on sea turtles.

At the time the DEIS was prepared, we had extremely limited information on the effects of the skimmer trawl fisheries on sea turtle populations. During this past summer, we shifted observer effort from the offshore otter shrimp trawl fishery to the inshore skimmer trawl fisheries in the Northern Gulf of Mexico to obtain more information on the potential impacts to sea turtle populations. Between May and July 2012, observers reported the capture of 24 sea turtles on skimmer trawl vessels, all of which were Kemp's ridley sea turtles. Tow times ranged from 24 to 128 minutes, with approximately 20

percent being over 70 minutes, with an average tow time of 57 minutes. While only 35 percent of tows were within the required 55-minute tow time limit, all sea turtles were released alive. One turtle was initially comatose but became active while on deck before release. Additionally, all observed sea turtles were small, juvenile specimens, and approximately 58 percent of these turtles had a body depth that could allow them to pass between the required maximum 4-inch bar spacing of a TED.

Using catch per unit effort (CPUE) from the recent summer observer coverage, we completed new estimates of sea turtle captures within the Gulf of Mexico skimmer trawl fisheries. Additionally, we applied a summer mortality rate based on the 2012 observer data to calculate estimated mortalities of sea turtles within the skimmer trawl fisheries currently operating without TEDs. While all observed sea turtle captures were released alive, one turtle was originally boated in a comatose state. Based on National Research Council (1990) recommendations, this turtle was scored as a mortality to be conservative and account for real-world fishery conditions where turtles may not be properly resuscitated before being released.

To evaluate the effects of requiring TEDs in the Gulf of Mexico skimmer trawl fisheries, we modified our approach from the DEIS based on advice from the Southeast Fisheries Science Center's (SEFSC) regarding the utilization and limitations of the summer observer coverage data. The new approach accounted for the significant number of small turtles that might pass between the deflector bars of a TED and back into the bag of the trawl net, and also examined less optimistic compliance scenarios should TEDs be required in the skimmer trawl fisheries. Since the majority of skimmer trawls operate in Louisiana state waters where federal TED requirements are not enforced by Louisiana state law enforcement (due to state legislation and significant resistance to the original sea turtle conservation efforts in the shrimp fishery), we would not expect high compliance immediately following potential rule implementation. While compliance has likely fluctuated over the years, it took the offshore otter trawl fishery over 20 years of

implementation and 2 years of intensive outreach and enforcement efforts to achieve an estimated 84 percent TED effectiveness rate. Therefore, we estimated sea turtle captures and mortalities under a potential TED requirement for the skimmer trawl fisheries based on staggered rates of TED effectiveness. Specifically, we assumed TED effectiveness would be 65 percent for years 1-2 following implementation, 75 percent for years 3-4, and, ultimately, 84 percent for year 5 and into the future. To account for the issue of small turtles potentially passing through the deflector bars, we estimated a range, assuming that roughly one-third to one-half of the small turtles would not be excluded by the TED but would pass through the bars and be exposed to a higher mortality rate in the bag of the trawl.

Also, the mortality rate for small turtles that pass through the bars and into the bag of the net, and for other turtles that do not escape the TED due to compliance issues that impact TEDs' effectiveness, was based on long tow times (i.e., 102 minutes) as modeled by Sasso and Epperly (2006). The assumption is that with an installed TED, vessels would not be limited by a 55 or 75 minute tow time (depending on season), and would likely tow for longer periods. However, actual tow times may be dictated by environmental conditions (e.g., debris issues) or navigational requirements (e.g., tight or irregular water bodies, such as bayous along the Louisiana coast). In areas where vessels need to clear their nets of debris or raise their gear to navigate, tow times may be on average shorter than compared to skimmer vessels operating in larger, open water bodies (e.g., Mississippi Sound). Therefore, based on past experience recording tow times prior to the observer coverage, we determined a mortality rate corresponding to a tow time of 102 minutes accounted for the potential changes in fishing behavior as a result of the proposed rule.

The revised capture and mortality estimates indicated the Gulf of Mexico skimmer trawl fisheries result in 1,893 sea turtle mortalities per year as they currently operate (versus 2,066-6,386 sea turtle mortalities estimated for the Gulf of Mexico in the

DEIS). Sea turtle mortalities resulting from the Gulf of Mexico skimmer trawl fisheries under a with-TED scenario were estimated to be 1,977-2,219 for years 1-2; 1,576-1,855 for years 3-4; and 1,217-1,530 for years 5 and on.

In contrast to the estimates included in the DEIS, the revised capture and mortality estimates indicate that the potential benefits of a TED requirement in the Gulf of Mexico skimmer trawl fisheries are significantly less than previously estimated in the DEIS. Therefore, given the potentially significant economic ramifications a TED requirement would have on fishermen participating in the inshore skimmer trawl fisheries combined with highly uncertain ecological benefits to sea turtle populations compared to the status quo based on the new observer data, we concluded a final rule to require all skimmer trawls, pusher-head trawls, and wing nets (butterfly trawls) in the Gulf of Mexico to use TEDs in their nets is not warranted at this time, and are withdrawing our proposed rule.

Observer coverage has also been initiated in 2012 for the North Carolina skimmer trawl fishery, but new data are currently unavailable. Caution would be prudent when considering the DEIS estimates and conclusions for the North Carolina fishery, given the insight obtained on the skimmer trawl fisheries in the Northern Gulf of Mexico (e.g., average tow times and mortality rates). For instance, estimating sea turtle mortalities based on the proxy of a 102-minute average tow time is most likely overly conservative for the North Carolina fleet given the 57-minute average tow time documented in the summer observer coverage work for the Gulf of Mexico skimmer trawl fisheries. Further, our previous CPUE rates and information on species composition and size classes for North Carolina is extrapolated from only three captures. The observer information from this past summer's work in the Gulf of Mexico significantly changed our understanding of these important variables. Therefore, we believe pursuing a final rule strictly for the North Carolina skimmer trawl fishery is also unwarranted at this time.

We believe additional observer effort is necessary to evaluate the potential effects of the skimmer trawl fisheries on sea turtle populations. In particular, we would like to have information on interactions during winter months, which have not been sampled, and for which we have not been able to update the analysis used in the DEIS. Additionally, extended observer sampling in the Northern Gulf of Mexico during summer months is needed to determine if this year's observed interactions, particularly the prevalence of very small Kemp's ridley sea turtles, were an anomaly based on oceanographic conditions or the impact of strong recruitment from increased nesting success of Kemp's ridley sea turtles, which could be expected to continue into the future. The prevalence of these very small turtles has potentially significant implications for future management directions, and needs to be better understood.

We also expect to explore technological solutions to address the small turtle issue, such as conducting TED feasibility and catch loss studies on TEDs with bar spacing less than 4 inches. Additional observer data and an analysis of the size of turtles interacting with the inshore skimmer trawl fisheries would be pursued to determine TED bar spacing that would maximize benefits to sea turtle conservation. Our objective is to have sufficient information to evaluate a potential proposed rule that would be effective in reducing sea turtle bycatch in the inshore skimmer trawl fisheries in the near future.

Additionally, we believe there is a need to explore if there are better criteria to determine mortality in trawl fisheries. In consultation with relevant experts, the agency will examine this issue and produce a report with our findings and any new criteria that may be developed.

Concurrently, we expect to improve outreach efforts with industry to address compliance issues with tow time requirements observed in the inshore skimmer trawl fisheries. Numerous requests to strengthen outreach, specifically in regards to education on tow time requirements, were received from the public and industry during the comment periods for the proposed rule and DEIS. These outreach efforts would likely

improve compliance and, therefore, decrease sea turtle mortality in the inshore skimmer trawl fisheries in the near term.

References

National Research Council. 1990. Decline of the Sea Turtles: Causes and Prevention. National Academy Press, Washington, DC. 259 pp.

Sasso, C.R. and S.P. Epperly. 2006. Seasonal sea turtle mortality risk from forced submergence in bottom trawls. Fisheries Research 81:86-88.

Dated: February 4, 2013.

Alan D. Risenhoover,
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performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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